

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOHN DODD

www.oxfordjournals.org

Plaintiff,

VS.

CIVIL ACTION NO.

**SCOTTSDALE INSURANCE
COMPANY**

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Defendant.

NOTICE OF REMOVAL

Defendant Scottsdale Insurance Company (“Defendant”) files this Notice of Removal of the above-styled action pursuant to 28 U.S.C. §§ 1446(a) and would respectfully represent and show unto this Court the following:

A. Introduction

1. Pursuant to Local Rules 3.1 and 81.1, Defendant files its Civil Cover Sheet (Exhibit "A").
 2. On or about September 14, 2016, Plaintiff John Dodd ("Plaintiff") initiated a state court lawsuit against Defendant in the 162nd Judicial District Court of Dallas County, Texas styled *John Dodd v. Scottsdale Insurance Company*, pending as Cause No. DC-16-11813 ("the state court action"). In the state court action, Plaintiff seeks actual damages for breach of contract, damages for violation of the Texas Deceptive Trade Practices Act, and damages for violations of the Texas Insurance Code. Further, Plaintiff seeks attorneys' fees, treble damages, exemplary damages and 18% interest. *See Plaintiff's Original Petition*, attached hereto as Exhibit "B".
 3. The attorneys involved in the action being removed are listed as follows:

<u>Party and Party Type</u>	<u>Attorney(s)</u>
John Dodd - Plaintiff	Sheldon Wayne Texas Bar. No. 24098581 Richard D. Daly Texas Bar No. 00796429 Daly & Black, P.C. 2211 Norfolk Str., Suite 800 Houston, Texas 77098 713.655.1405 – phone 713.655.1587 – fax swayne@dalyblack.com rdaly@dalyblack.com
Scottsdale Insurance Company - Defendant	Randall G. Walters Texas Bar No. 20819480 Walters, Balido & Crain, L.L.P. Meadow Park Tower 10440 N. Central Expy, Suite 1500 Dallas, TX 75231 Telephone (214) 749-4805 Facsimile: (214) 760-1670 Randy.walters@wbclawfirm.com

4. The name and address of the court from which the case is being removed is as follows:

The Honorable Phyllis Lister Brown (deceased)(Judge Michael O'Neill presiding)
162nd District Court
George L. Allen, Sr. Courts Building
600 Commerce Street
Dallas, Texas 75202-4631

B. Notice of Removal Timely

5. Defendant was served with process and a copy of Plaintiff's suit on October 25, 2016. See Exhibit "B". Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt by Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based. Consequently, this Notice of Removal is timely.

C. Complete Diversity

6. Pursuant to the state court action, Plaintiff John Dodd is a citizen of the State of Texas, located in Dallas County, Texas.

7. Defendant, Scottsdale Insurance Company, was and is a company organized under the laws of the state of Ohio with its principal place of business in the State of Arizona. Scottsdale is a Citizen of the State of Ohio and Arizona, and was a citizen of these states at the time this action was filed.

8. In light of the foregoing, the parties are of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1441(b).

9. Plaintiff's Original Petition alleges actual damages, seeks three times the amount of actual damages, and seeks attorneys' fees, interest and exemplary damages. Exhibit "B" at 5. Specifically, Plaintiff seeks an amount over \$200,000.00 but not more than \$1,000,000.00. *Id.*

10. In determining the amount in controversy, the court may consider "policy limits ... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at *2-*3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff's case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co., et al.*, 75 F.Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exchange*, 844 F.Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought, and the

presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

11. Plaintiff's claims are centered on Scottsdale's alleged failure to pay the proceeds of Plaintiff's policy for damages to Plaintiff's property. Plaintiff's total policy limits of insurance on its property greatly exceeds \$75,000. Further, Plaintiff, as stated in his Original Petition, seek damages for breach of contract, violations of the Texas Insurance Code, the Texas Deceptive Trade Practices Act as well as pre-judgment interest, post-judgment interest, court costs, attorneys' fees and penalties, including statutory treble damages and exemplary damages.

12. A court can determine that removal is proper from a plaintiff's pleadings if plaintiff's claims are those that are likely to exceed the jurisdictional amount. *See Allen v. R&H Oil & Gas., Co*, 63 F.3d 1326, 1335 (5th Cir. 1995); *De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993). Only "expenses and costs" are excluded from the calculation of the matter in controversy. 28 U.S.C. § 1332(a). Attorney's fees are an element of the amount in controversy where their recovery is authorized by a statute under which the plaintiff sues. *H&D Tire & Auto. Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 330 (5th Cir. 2000), cert. denied, 534 U.S. 894 (2001).

13. Plaintiff even specifically stated in his Original Petition that he seeks monetary relief of over \$200,000 but not more than \$1,000,000.00. Exhibit "B" at 2. Therefore, the amount in controversy in this case exceeds the jurisdictional requirements. *Id.*

D. All Pleadings of State Court Action Attached As Exhibits

14. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). *See Exhibit "C".*

E. Basis for Removal

15. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, because Plaintiff is a citizen and resident of Texas, Defendant is a citizen of Ohio and Arizona; and the amount in controversy exceeds \$75,000, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

F. Venue

16. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place where the removed action has been pending.

G. Filing of Notice with State Court

17. Promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through his attorney of record and to the clerk of the state court.

H. Defendant's Demand for Jury Trial

18. Defendant demanded jury trial in Original Answer. Defendant also asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

PRAYER

19. WHEREFORE, PREMISES CONSIDERED, Defendant Scottsdale Insurance Company requests that this Court proceed with the handling of this cause as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that they have such other and further relief to which they may show themselves entitled.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

BY: /s/ Randall G. Walters
RANDALL G. WALTERS - 20819480
Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, Texas 75231
214/347-8381 - FAX
214/347-8380 - DIRECT
214/749-4805 - MAIN
Email: randy.walters@wbclawfirm.com
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of November, 2016, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Randall G. Walters
RANDALL G. WALTERS

Exhibit “A”

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
John Dodd(b) County of Residence of First Listed Plaintiff Dallas County, Texas
*(EXCEPT IN U.S. PLAINTIFF CASES)***DEFENDANTS**
Scottsdale Insurance CompanyCounty of Residence of First Listed Defendant Maricopa County, Arizona
*(IN U.S. PLAINTIFF CASES ONLY)*NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.(c) Attorneys (*Firm Name, Address, and Telephone Number*)
Sheldon Wayne of Daly & Black, PC
2211 Norfolk St., Suite 800
Houston, Texas 77098Attorneys (*If Known*)
Randall G. Walters of Walters, Balido & Crain
10440 North Central Expressway, Suite 1500
Dallas, Texas 75231**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
<i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
<i>(Indicate Citizenship of Parties in Item III)</i> |

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	LABOR	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	SOCIAL SECURITY	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 386 Other Personal Injury	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 388 Property Damage	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 390 Other Product Liability	FEDERAL TAX SUITS	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habens Corpus:		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN *(Place an "X" in One Box Only)*

- | | | | | | | |
|--|--|--|---|--|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|--|--|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):
28 USC 1332**VI. CAUSE OF ACTION**Brief description of cause:
Breach of Contract, DTPA, and Insurance Code Violations**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.**DEMAND \$**CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S)***(See instructions):*

IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

11/04/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/RANDALL G. WALTERS

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

Exhibit “B”



C O R P O R A T I O N S E R V I C E C O M P A N Y™

TRL / ALL

Transmittal Number: 15789541

Date Processed: 10/25/2016

Notice of Service of Process

Primary Contact: Service Process Team 3-11-309
Nationwide Mutual Insurance Company
Three Nationwide Plaza
Columbus, OH 43215

Electronic copy provided to: Cassandra Struble
Rebecca Lewis
Kevin Jones

Entity: Scottsdale Insurance Company
Entity ID Number 3286058

Entity Served: Scottsdale Insurance Company

Title of Action: John Dodd vs. Scottsdale Insurance Company

Document(s) Type: Citation/Petition

Nature of Action: Contract

Court/Agency: Dallas County District Court, Texas

Case/Reference No: DC-16-11813

Jurisdiction Served: Ohio

Date Served on CSC: 10/25/2016

Answer or Appearance Due: 10:00 am Monday next following the expiration of 20 days after service

Originally Served On: Scottsdale Insurance Company

How Served: Client Direct

Sender Information: Daly & Black, P.C.
N/A

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

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TEXAS DEPARTMENT OF INSURANCE

General Counsel Division (113-2A)
333 Guadalupe, Austin, Texas 78701 ★ PO Box 149104, Austin, Texas 78714-9104
(512) 676-6585 | F: (512) 490-1064 | (800) 578-4677 | TDI.texas.gov | @TexasTDI

October 18, 2016

Certified Mail No. 7015 0640 0002 0960 5825
Return Receipt Requested

Scottsdale Insurance Company
ATTN: R. Lindsey McCutchan
Vice-Pres.-Legal & Asst. Secretary
8877 N. Gainey Center Drive
Scottsdale, AZ 85258

Re: Cause No. DC-16-11813; styled *John Dodd vs. Scottsdale Insurance Company*; in the 162nd Judicial District Court, Dallas County, Texas

Greetings:

Service of Process has been requested through the Commissioner of Insurance. Enclosed please find citation and Plaintiff's Original Petition, Interrogatories, Request for Production and Request for Admissions in the above-referenced matter. These documents were served upon the Commissioner of Insurance on October 12, 2016.

Sincerely,

Tish Wilhelm

Tish Wilhelm
General Counsel Division
(512) 676-6543

Enclosure

**FORM NO. 353-4—CITATION
THE STATE OF TEXAS**

To: SCOTTSDALE INSURANCE COMPANY
BY SERVING THE COMMISSIONER OF INSURANCE
333 GUADALUPE
AUSTIN, TX 78701

SCOTTSDALE INSURANCE COMPANY
8877 NORTH GAINY CENTER DRIVE
SCOTTSDALE, AZ 85258

CITATION

No.: DC-16-11813

JOHN DODD
VS.

SCOTTSDALE INSURANCE COMPANY

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with The clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 162nd District Court at 600 Commerce Street, Dallas, Texas 75202.

Said PLAINTIFF being JOHN DODD

Filed in said Court 14th day of September, 2016 against
SCOTTSDALE INSURANCE COMPANY

For suit, said suit being numbered **DC-16-11813** the nature of which demand is as follows:
Suit On **CNTR CNSMR COM DEBT** etc.

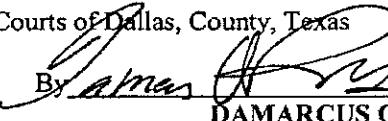
as shown on said petition **REQUEST FOR DISCLOSURE, REQUEST FOR ADMISSIONS, REQUEST FOR PRODUCTION AND REQUEST INTERROGATORIES**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

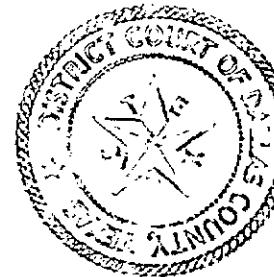
WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office **on this the 16th day of September, 2016**

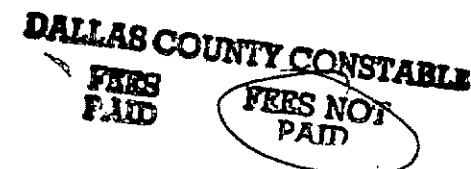
ATTEST: FELICIA PITRE

Clerk of the District Courts of Dallas, County, Texas

By  Deputy
DAMARCUS OFFORD



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OFFICER'S RETURN
FOR INDIVIDUALS

Cause No. DC-16-11813

Court No: 162nd District Court

Style: JOHN DODD

vs.

SCOTTSDALE INSURANCE COMPANY

Received this Citation the _____ day of _____, 20____ at _____ o'clock. Executed at _____, within the County of _____, State of _____, on the _____ day of _____, 20____, at _____ o'clock, by _____
delivering to the within named _____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.
-----000000-----

OFFICER'S RETURN
FOR CORPORATIONS

Received this Citation the _____ day of _____, 20____ at _____ o'clock ____M. Executed at _____, within the County of _____, State of _____, on the _____ day of _____, 20____, at _____ o'clock ____M. by summoning
the within named Corporation, _____ by delivering to _____
President - Vice President - Registered Agent - in person, of the said _____
a true copy of this citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.
-----000000-----

The distance actually traveled by me in serving such process was _____ miles and my fees are as follows:

For Serving Citation \$ _____
For Mileage \$ _____
For Notary \$ _____
Total Fees \$ _____

To certify which witness by my hand.

Sheriff _____
County of _____
State of _____
By _____

(Must be verified if served outside the State of Texas)

State of _____

County of _____

Signed and sworn to me by the said _____ before me this _____
day of _____, 20____, to certify which witness my hand and seal of office.

Seal

State & County of _____

1-CIT COI

Atty

FILED
DALLAS COUNTY
9/14/2016 4:01:55 PM
FELICIA PITRE
DISTRICT CLERK

Tonya Pointed

16

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DC-16-11813
CAUSE NO.

JOHN DODD,

IN THE DISTRICT COURT OF

Plaintiff,

§

vs.

§

DALLAS COUNTY, TEXAS

SCOTTSDALE INSURANCE COMPANY,

§

Defendant.

§

JUDICIAL DISTRICT

§

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

John Dodd ("Mr. Dodd"), Plaintiff herein, files this Original Petition against Defendant Scottsdale Insurance Company ("Scottsdale") and, in support of his causes of action, would respectfully show the Court the following:

I.
THE PARTIES

1. John Dodd is a Texas resident who resides in Dallas County, Texas.
2. Scottsdale is an insurance company doing business in the State of Texas which may be served through its registered agent for service of process in the State of Texas, Texas Department of Insurance, at P. O. Box 149104, Austin, TX 78714-9104. The Texas Department of Insurance should then forward the citation to Scottsdale Insurance Company, via certified mail, to 8877 North Gainey Center Drive, Scottsdale, AZ 85258.

II.
DISCOVERY

3. This case is intended to be governed by Discovery Level 2.

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III.
CLAIM FOR RELIEF

4. The damages sought are within the jurisdictional limits of this court. Plaintiff currently seeks monetary relief over \$200,000, but not more than \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

IV.
JURISDICTION AND VENUE

5. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

6. Venue is proper in Dallas County because all or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County. TEX. CIV. PRAC & REM CODE § 15.002(a)(1). In particular, the loss at issue occurred in Dallas County.

V.
FACTUAL BACKGROUND

7. Mr. Dodd is a named insured under a property insurance policy issued by Scottsdale.

8. On or about October 23, 2015 a storm hit the Dallas, Texas area, damaging Mr. Dodd's office building and other property. Mr. Dodd subsequently filed a claim on his insurance policy.

9. Defendant improperly denied and/or underpaid the claim.

10. The adjuster assigned to the claim conducted a substandard investigation and inspection of the property, prepared a report that failed to include all of the damages that were observed during the inspection, and undervalued the damages observed during the inspection.

11. This unreasonable investigation led to the underpayment of Plaintiff's claim.

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12. Moreover, Scottsdale performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the property.

VI.
CAUSES OF ACTION

13. Each of the foregoing paragraphs is incorporated by reference in the following:

A. Breach of Contract

14. Scottsdale had a contract of insurance with Plaintiff. Scottsdale breached the terms of that contract by wrongfully denying and/or underpaying the claim and Plaintiff was damaged thereby.

B. Prompt Payment of Claims Statute

15. The failure of Scottsdale to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

16. Plaintiff, therefore, in addition to Plaintiff's claim for damages, is entitled to 18% interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

C. Bad Faith/Deceptive Trade Practices Act ("DTPA")

17. Defendant is required to comply with Chapter 541 of the Texas Insurance Code.

18. Defendant violated Section 541.051 of the Texas Insurance Code by:

(1) making statements misrepresenting the terms and/or benefits of the policy.

19. Defendant violated Section 541.060 by:

(1) misrepresenting to Plaintiff a material fact or policy provision relating to coverage at issue;

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- (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;
 - (3) failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
 - (4) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and
 - (5) refusing to pay the claim without conducting a reasonable investigation with respect to the claim;
20. Defendant violated Section 541.061 by:
- (1) making an untrue statement of material fact;
 - (2) failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;
 - (3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
 - (4) making a material misstatement of law; and
 - (5) failing to disclose a matter required by law to be disclosed.
21. At all material times hereto, Plaintiff was a consumer who purchased insurance products and services from Defendant.
22. Defendant has violated the Texas DTPA in the following respects:

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- (1) Defendant represented that the agreement confers or involves rights, remedies, or obligations which it does not have, or involve, or which are prohibited by law;
- (2) Scottsdale failed to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction that the consumer would not have entered into had the information been disclosed;
- (3) Scottsdale, by accepting insurance premiums but refusing without a reasonable basis to pay benefits due and owing, engaged in an unconscionable action or course of action as prohibited by Section 17.50(a)(1)(3) of the DTPA in that Scottsdale took advantage of Plaintiff's lack of knowledge, ability, experience, and capacity to a grossly unfair degree, that also resulted in a gross disparity between the consideration paid in the transaction and the value received, in violation of Chapter 541 of the Texas Insurance Code.

23. Defendant knowingly committed the acts complained of. As such, Plaintiff is entitled to exemplary and/or treble damages pursuant to the DTPA and Texas Insurance Code Section 541.152(a)-(b).

D. Attorneys' Fees

24. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendant and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

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25. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to Texas Civil Practice and Remedies Code Sections 38.001-38.003 because he is represented by an attorney, presented the claim to Defendant, and Defendant did not tender the just amount owed before the expiration of the 30th day after the claim was presented.

26. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 and 542.060 of the Texas Insurance Code.

VII.
CONDITIONS PRECEDENT

27. All conditions precedent to Plaintiff's right to recover have been fully performed, or have been waived by Defendant.

VIII.
DISCOVERY REQUESTS

28. Pursuant to Rule 194, you are requested to disclose, within fifty (50) days after service of this request, the information or material described in Rule 194.2(a)-(l).

29. You are also requested to respond to the attached interrogatories, requests for production, and requests for admissions within fifty (50) days, in accordance with the instructions stated therein.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, John Dodd prays that, upon final hearing of the case, he recover all damages from and against Defendant that may reasonably be established by a preponderance of the evidence, and that Mr. Dodd be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and

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further relief, general or special, at law or in equity, to which Mr. Dodd may show himself to be justly entitled.

Respectfully submitted,

DALY & BLACK, P.C.

By: /s/ Sheldon Wayne

Richard D. Daly

TBA No. 00796429

rdaly@dalyblack.com

ecfs@dalyblack.com

Sheldon Wayne

TBA No. 24098581

swayne@dalyblack.com

2211 Norfolk St., Suite 800

Houston, Texas 77098

713.655.1405—Telephone

713.655.1587—Fax

**ATTORNEYS FOR PLAINTIFF
JOHN DODD**

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**PLAINTIFF'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS**

COMES NOW Plaintiff in the above-styled and numbered cause, and requests that Defendant (1) answer the following discovery requests separately and fully in writing under oath within 30 days of service (or within 50 days of service if the discovery was served prior to the date an answer is due); (2) produce responsive documents to the undersigned counsel within the same time period; and (3) serve its answers to these discovery requests within the same time period to Plaintiff by and through his attorneys of record: Richard D. Daly, John Black, Ana M. Ene and William X. King, Daly & Black, P.C., 2211 Norfolk St, Suite 800, Houston, Texas 77098.

Respectfully submitted,

DALY & BLACK, P.C.

By: /s/ Sheldon Wayne
Richard D. Daly
TBA No. 00796429
rdaly@dalyblack.com
ecfs@dalyblack.com
Sheldon Wayne
TBA No. 24098581
swayne@dalyblack.com
2211 Norfolk St., Suite 800
Houston, Texas 77098
713.655.1405—Telephone
713.655.1587—Fax

**ATTORNEYS FOR PLAINTIFF
JOHN DODD**

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CERTIFICATE OF SERVICE

I hereby certify that I sent a true and correct copy of the attached discovery requests to Defendant(s) as an attachment to the petition. Therefore, Defendant would have received it when it was served with the citation.

/s/ Sheldon Wayne
Sheldon Wayne

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INSTRUCTIONS

- A. These Responses call for your personal and present knowledge, as well as the present knowledge of your attorneys, investigators and other agents, and for information available to you and to them.
- B. Pursuant to the applicable rules of civil procedure, produce all documents responsive to these Requests for Production as they are kept in the usual course of business or organized and labeled to correspond to the categories in the requests within the time period set forth above at Daly & Black, P.C.
- C. If you claim that any document or information which is required to be identified or produced by you in any response is privileged, produce a privilege log according to the applicable rules of civil procedure.
 - 1. Identify the document's title and general subject matter;
 - 2. State its date;
 - 3. Identify all persons who participated in its preparation;
 - 4. Identify the persons for whom it was prepared or to whom it was sent;
 - 5. State the nature of the privilege claimed; and
 - 6. State in detail each and every fact upon which you base your claim for privilege.
- D. If you claim that any part or portion of a document contains privileged information, redact only the part(s) or portion(s) of the document you claim to be privileged.
- E. If you cannot answer a particular Interrogatory in full after exercising due diligence to secure the information to do so, please state so and answer to the extent possible, specifying and explaining your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.
- F. You are also advised that you are under a duty to seasonably amend your responses if you obtain information on the basis of which:
 - 1. You know the response made was incorrect or incomplete when made; or
 - 2. You know the response, though correct and complete when made, is no longer true and complete, and the circumstances

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DEFINITIONS

- A. **"Defendant," "You," "Your(s),"** refers to Scottsdale Insurance Company, its agents, representatives, employees and any other entity or person acting on its behalf.
- B. **"Plaintiff"** refers to the named Plaintiff in the above-captioned suit.
- C. **"The Property(ies)"** refers to the property or properties located at the address(es) covered by the Policy.
- D. **"The Policy"** refers to the policy issued to Plaintiff by the insurer and at issue in this lawsuit.
- E. **"The Claim(s)"** means the claim for insurance benefits submitted by Plaintiff and at issue in this lawsuit, or in a prior claim, as the context may dictate.
- F. **"Date of Loss"** refers to the date(s) of loss identified in Plaintiff's live petition/complaint or other written or oral notice, or otherwise assigned to the claim by the insurer.
- G. **"Handle"** or **"Handled"** means investigating, adjusting, supervising, estimating, managing, settling, approving, supplying information or otherwise performing a task or work with respect to the claim(s) at issue in this lawsuit, excluding purely ministerial or clerical tasks.
- H. **"Lawsuit"** refers to the above styled and captioned case.
- I. **"Communication"** or **"communications"** shall mean and refer to the transmission or exchange of information, either orally or in writing, and includes without limitation any conversation, letter, handwritten notes, memorandum, inter or intraoffice correspondence, electronic mail, text messages, or any other electronic transmission, telephone call, telegraph, telex telecopy, facsimile, cable, conference, tape recording, video recording, digital recording, discussion, or face-to-face communication.
- J. The term **"Document"** shall mean all tangible things and data, however stored, as set forth in the applicable rules of civil procedure, including, but not limited to all original writings of any nature whatsoever, all prior drafts, all identical copies, all nonidentical copies, correspondence, notes, letters, memoranda of telephone conversations, telephone messages or call slips, interoffice memoranda, intraoffice memoranda, client conference reports, files, agreements, contracts, evaluations, analyses, records, photographs sketches, slides, tape recordings, microfiche, communications, printouts, reports, invoices, receipts, vouchers, profit and loss statements, accounting ledgers, loan documents, liens, books of accounting, books of operation, bank statements, cancelled checks, leases, bills of sale, maps, prints, insurance policies, appraisals, listing agreements, real estate closing documents, studies, summaries, minutes, notes, agendas, bulletins, schedules, diaries, calendars,

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logs, announcements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, photographic matter, sound reproductions, however recorded, whether still on tape or transcribed to writing, computer tapes, diskettes, disks, all other methods or means of storing data, and any other documents. In all cases where originals, prior drafts, identical copies, or nonidentical copies are not available; "document" also means genuine, true and correct photo or other copies of originals, prior drafts, identical copies, or nonidentical copies. "Document" also refers to any other material, including without limitation, any tape, computer program or electronic data storage facility in or on which any data or information has been written or printed or has been temporarily or permanently recorded by mechanical, photographic, magnetic, electronic or other means, and including any materials in or on which data or information has been recorded in a manner which renders in unintelligible without machine processing.

- K. The term "**referring**" or "**relating**" shall mean showing, disclosing, averting to, comprising, evidencing, constituting or reviewing.
- L. The singular and masculine form of any noun or pronoun includes the plural, the feminine, and the neuter.
- M. The terms "**identification**," "**identify**," and "**identity**" when used in reference to:
 - 1. **Natural Persons:** Means to state his or her full name, residential address, present or last known business address and telephone number, and present or last known position and business affiliation with you;
 - 2. **Corporate Entities:** Means to state its full name and any other names under which it does business, its form or organization, its state of incorporation, its present or last known address, and the identity of the officers or other persons who own, operate, or control the entity;
 - 3. **Documents:** Means you must state the number of pages and nature of the document (e.g. letter or memorandum), its title, its date, the name or names of its authors and recipients, its present location and custodian, and if any such document was, but no longer is, in your possession or control, state what disposition was made of it, the date thereof, and the persons responsible for making the decision as to such disposition;
 - 4. **Communication:** Requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication and, to the extent that the communication was non-written, to identify each person participating in the communication and to state the date, manner, place, and substance of the communication; and
 - 5. **Activity:** Requires you to provide a description of each action, occurrence, transaction or conduct, the date it occurred, the location at which it occurred, and the identity of all persons involved.
- N. The term "**Claim File**" means the claim files and "**field file(s)**," whether kept in paper or electronic format, including but not limited to all documents, file jackets, file notes, claims diary or journal entries, log notes, handwritten notes, records of oral

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communications, communications, correspondence, photographs, diagrams, estimates, reports, recommendations, invoices, memoranda and drafts of documents regarding the Claim.

- O. The term "**Underwriting File**" means the entire file, including all documents and information used for underwriting purposes even if you did not rely on such documents or information in order to make a decision regarding insuring Plaintiff's Property.

NOTICE OF AUTHENTICATION

You are advised that pursuant to Tex. R. Civ. P. 193.7, Plaintiff intends to use all documents exchanged and produced between the parties, including but not limited to correspondence and discovery responses during the trial of the above-entitled and numbered cause.

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INTERROGATORIES TO DEFENDANT SCOTTS DALE

INTERROGATORY NO. 1:

Identify all persons answering or supplying any information in answering these interrogatories.

ANSWER:

INTERROGATORY NO. 2:

Identify all persons who were involved in evaluating Plaintiff's claim and provide the following information for each person you identify:

- a. their name and job title(s) as of the Date of Loss;
- b. their employer; and
- c. description of their involvement with Plaintiff's Claim.

ANSWER:

INTERROGATORY NO. 3:

If you contend that the some or all of the damages to the Property were not covered losses under the Policy, describe:

- a. the scope, cause and origin of the damages you contend are not covered losses under the Policy; and
- b. the term(s) or exclusion(s) of the Policy you relied upon in support of your decision regarding the Claim.

ANSWER:

INTERROGATORY NO. 4:

State whether the initial estimate you issued was revised or reconciled, and if so, state what was changed and who did it.

ANSWER:

INTERROGATORY NO. 5:

If you contend that Plaintiff did not provide you with requested information that was required to properly evaluate Plaintiff's Claim, identify the information that was requested and not provided, and the dates you made those request(s).

ANSWER:

INTERROGATORY NO. 6:

If you contend that Plaintiff's acts or omissions voided, nullified, waived or breached the Policy in any way, state the factual basis for your contention(s).

ANSWER:

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INTERROGATORY NO. 7:

If you contend that Plaintiff failed to satisfy a condition precedent or covenant of the Policy in any way, state the factual basis for your contention(s).

ANSWER:

INTERROGATORY NO. 8:

Identify the date you first anticipated litigation.

ANSWER:

INTERROGATORY NO. 9:

State the factual basis for each of your affirmative defenses.

ANSWER:

INTERROGATORY NO. 10:

If you contend that Plaintiff failed to provide proper notice of the claim made the basis of this lawsuit, describe how the notice was deficient, and identify any resulting prejudice.

ANSWER:

INTERROGATORY NO. 11:

If you contend that Plaintiff failed to mitigate damages, describe how Plaintiff failed to do so, and identify any resulting prejudice.

ANSWER:

INTERROGATORY NO. 12:

Identify all items on the claim made the basis of this Lawsuit to which Defendant applied depreciation, stating for each item the criteria used and the age of the item.

ANSWER:

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REQUEST FOR PRODUCTION TO DEFENDANT SCOTTSDALE

REQUEST FOR PRODUCTION NO. 1

Produce a certified copy of all Policies you issued to Plaintiff for the Property that were in effect on the Date of Loss.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2

If you contend that any prior claims Plaintiff submitted for damages to the Property affected your decision in relation to the Claim at issue, produce a certified copy of all policies you issued to Plaintiff for the Property that were in effect during the handling of those claim(s).

RESPONSE:

REQUEST FOR PRODUCTION NO. 3

Produce a copy of the declarations pages you issued for the Property in the three (3) years preceding the Date of Loss.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4

Produce your complete Underwriting File for Plaintiff's policy of insurance with you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5

Produce the complete Claim File including all documents and communications regarding the Claim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6

Produce the Claim Files regarding the Claim of any third-party you hired and/or retained to investigate, consult on, handle and/or adjust the Claim.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 7

If you contend that any prior claims Plaintiff submitted for damages to the Property affected your decision in relation to the Claim at issue, produce the complete Claim File regarding those prior claim(s).

RESPONSE:

REQUEST FOR PRODUCTION NO. 8

Produce all documents Plaintiff (or any other person) provided to you related to the Claim or the Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9

Produce all documents you provided to Plaintiff (or any other person) related to the Claim or the Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10

Produce all documents (including reports, surveys, appraisals, damage estimates, proof of loss, or adjuster's report(s)) referring to the Claim, the Property or damage to the Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11

Produce color copies of all visual reproductions of the Property taken either prior to, at the time of, or after the Date of Loss (including diagrams, drawings, photographs, video records, videotapes, or other information).

RESPONSE:

REQUEST FOR PRODUCTION NO. 12

The file from the office of Plaintiff's insurance agent concerning Plaintiff's Property.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 13

Produce all communications between any of your claims personnel, claims handlers, field adjusters, office adjusters, and their direct or indirect supervisors related to the investigation, handling, and settlement of Plaintiff's Claim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14

Produce all written communications you sent to, or received from, any independent adjusters, engineers, contractors, estimators, consultants or other third-parties who participated in investigating, handling, consulting on, and/or adjusting Plaintiff's Claim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15

Produce all written and/or electronic communications you sent to, or received from, Plaintiff's insurance agent related to the Claim, the Property, the Plaintiff or this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16

Produce all written and/or electronic communications you sent to, or received from, any local, state, or governmental entity related to the Claim, the Property, the Plaintiff or this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17

Produce all written and/or electronic communications you sent to, or received, from Plaintiff and/or any other named insured on the Policy related to the Claim, the Property, or this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18

Produce the personnel file for anyone you (or an adjusting firm) assigned to participate in evaluating damage to Plaintiff's Property, including performance reviews/evaluations. This request is limited to the three (3) years prior to the Date of Loss and one (1) year after the Date of Loss.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19

Produce your claim handling manual(s) (including operating guidelines) in effect on the Date of Loss related to your claims practices, procedures and standards for property losses and/or wind and hail storm claims, for persons handling claims on your behalf.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 20

Produce your property claims training manual and materials in effect on the Date of Loss, for persons handling, investigating and adjusting claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21

Produce all bulletins, notices, directives, memoranda, internal newsletters, publications, letters and alerts directed to all persons acting on your behalf that were issued from six (6) months before and after the Date of Loss related to the handling of wind or hail storm claims in connection with the storm at issue.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22

Produce the contract(s), agreement(s) and/or written understanding(s) with any independent adjusters or adjusting firms who you retained to investigate, handle and/or adjust Plaintiff's Claim on your behalf that were in effect on the Date of Loss.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23

Produce the contract(s), agreement(s) and/or written understanding(s) with any engineers and/or engineering firms you retained to investigate, handle and/or adjust Plaintiff's Claim on your behalf that were in effect at the time of his/her investigation, handling and/or adjustment of Plaintiff's claim, either pre or post-lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24

Produce the "Pay sheet," "Payment Log," or list of payments made on Plaintiff's Claim, including all indemnity, claim expenses and payments made to third-parties.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25

Produce all billing statements, including billing detail, showing the amounts you paid or for which you were billed by any independent adjusters or adjusting firms who inspected Plaintiff's Property in connection with the Claim.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 26

Produce all billing detail showing the amounts you paid or for which you were billed by any engineer and/or engineering firm who inspected Plaintiff's Property in connection with the Claim, whether pre or post-lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27

Produce all estimates, reports or memoranda, including drafts of the same, created for you or by any independent adjusters or adjusting firms in connection with the Claim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28

Produce all estimates, reports, or memoranda, including drafts of the same, created for you by any engineers and/or engineering firms in connection with the Claim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29

Produce all statements given by anyone, oral or written, to you or any of your agents, related to Plaintiff's Claim and/or any issue in Plaintiff's live petition

RESPONSE:

REQUEST FOR PRODUCTION NO. 30

Pursuant to the applicable rules of evidence, produce all documents evidencing conviction of a crime which you intend to use as evidence to impeach any party or witness.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 31

Produce all documents you identified, referred to, or relied upon in answering Plaintiff's interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32

Produce all non-privileged documents you identified, referred to, or relied upon in developing, answering and/or formulating your Answer and/or Affirmative Defenses to Plaintiff's live petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33

Produce copies of all documents you intend to offer as evidence at the trial of this matter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34

Produce copies of all documents relating to your declaration of the storm alleged to have caused damage to Plaintiff's Property as a "catastrophe."

RESPONSE:

REQUEST FOR PRODUCTION NO. 35

Produce copies of your engagement letter/fee agreement between you (or whatever entity or person is paying your attorney's fee bills) and your attorneys in this matter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36

Produce copies of your attorney's[s'] fee bills in this matter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37

If this claim involves reinsurance, produce copies of the policy or agreement pertaining to that reinsurance.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38

If an attorney was involved in evaluating payment or coverage of Plaintiff's Claim pre-suit, provide all documents relating to that evaluation or recommendation.

RESPONSE:

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REQUEST FOR ADMISSIONS TO DEFENDANT SCOTTSDALE

REQUEST FOR ADMISSION NO. 1:

Admit that on Date of Loss the Property sustained damages caused by a windstorm.

RESPONSE:

REQUEST FOR ADMISSION NO. 2:

Admit that on Date of Loss the Property sustained damages caused by a hailstorm

RESPONSE:

REQUEST FOR ADMISSION NO. 3:

Admit that as of the Date of Loss the Policy was in full force and effect.

RESPONSE:

REQUEST FOR ADMISSION NO. 4:

Admit that as of the Date of Loss all premiums were fully satisfied under the Policy.

RESPONSE:

REQUEST FOR ADMISSION NO. 5:

Admit that the Policy is a replacement cost value policy.

RESPONSE:

REQUEST FOR ADMISSION NO. 6:

Admit that the Policy is an actual cash value policy.

RESPONSE:

REQUEST FOR ADMISSION NO. 7:

Admit that aside from the Claim at issue, Plaintiff has never previously submitted a claim to you for damage to the Property.

RESPONSE:

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REQUEST FOR ADMISSION NO. 8:

Admit that you did not request a Sworn Proof of Loss from Plaintiff in connection with the Claim at issue.

RESPONSE:

REQUEST FOR ADMISSION NO. 9:

Admit that you did not request a Sworn Proof of Loss from any other named insured on the Policy in connection with the Claim at issue.

RESPONSE:

REQUEST FOR ADMISSION NO. 10:

Admit that Plaintiff timely submitted the Claim.

RESPONSE:

REQUEST FOR ADMISSION NO. 11:

Admit that your decision to deny or partially deny Plaintiff's Claim was made in whole or in part on the basis that third parties were responsible for causing damages to the Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 12:

Admit that Defendant's decision to deny or partially deny Plaintiff's Claim was made in whole or in part on the basis that the claimed damages are not covered by the Policy.

RESPONSE:

REQUEST FOR ADMISSION NO. 13:

Admit that Defendant's decision to deny or partially deny Plaintiff's Claim was made in whole or in part on the timeliness of the Claim's submission.

RESPONSE:

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REQUEST FOR ADMISSION NO. 14:

Admit that you depreciated the costs of labor when determining the actual cash value of the Claim at issue.

RESPONSE:

REQUEST FOR ADMISSION NO. 15:

Admit that the adjuster assigned to investigate the Claim did not review the underwriting file at any time during the adjustment of the Claim.

RESPONSE:

REQUEST FOR ADMISSION NO. 16:

Admit that the Claim was reviewed by persons other than people who actually inspected the Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 17:

Admit that you reinsured the risk under Plaintiff's Policy.

RESPONSE:

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Texas Department of Insurance

333 Guadalupe St. • P.O. Box 149104, Austin, Texas 78714-9104
www.tdi.texas.gov

OFFICIAL BUSINESS
STATE OF TEXAS
PENALTY FOR PRIVATE USE

RETURN SERVICE REQUESTED

VERIFIED MAIL



7015 0640 0002 0960 5825

Scottsdale Insurance Company
ATTN: R. Lindsey McCutchan
Vice-Pres.-Legal & Asst. Secretary
8877 N. Gainey Center Drive
Scottsdale, AZ 85258

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Exhibit “C”

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Atty
CAUSE NO. DC-16-11813

JOHN DODD,

Plaintiff,

vs.

SCOTTSDALE INSURANCE COMPANY,

Defendant,

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

John Dodd ("Mr. Dodd"), Plaintiff herein, files this Original Petition against Defendant Scottsdale Insurance Company ("Scottsdale") and, in support of his causes of action, would respectfully show the Court the following:

I.
THE PARTIES

1. John Dodd is a Texas resident who resides in Dallas County, Texas.
2. Scottsdale is an insurance company doing business in the State of Texas which may be served through its registered agent for service of process in the State of Texas, Texas Department of Insurance, at P. O. Box 149104, Austin, TX 78714-9104. The Texas Department of Insurance should then forward the citation to Scottsdale Insurance Company, via certified mail, to 8877 North Gainey Center Drive, Scottsdale, AZ 85258.

II.
DISCOVERY

3. This case is intended to be governed by Discovery Level 2.

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III.
CLAIM FOR RELIEF

4. The damages sought are within the jurisdictional limits of this court. Plaintiff currently seeks monetary relief over \$200,000, but not more than \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

IV.
JURISDICTION AND VENUE

5. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

6. Venue is proper in Dallas County because all or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County. TEX. CIV. PRAC & REM CODE § 15.002(a)(1). In particular, the loss at issue occurred in Dallas County.

V.
FACTUAL BACKGROUND

7. Mr. Dodd is a named insured under a property insurance policy issued by Scottsdale.

8. On or about October 23, 2015 a storm hit the Dallas, Texas area, damaging Mr. Dodd's office building and other property. Mr. Dodd subsequently filed a claim on his insurance policy.

9. Defendant improperly denied and/or underpaid the claim.

10. The adjuster assigned to the claim conducted a substandard investigation and inspection of the property, prepared a report that failed to include all of the damages that were observed during the inspection, and undervalued the damages observed during the inspection.

11. This unreasonable investigation led to the underpayment of Plaintiff's claim.

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12. Moreover, Scottsdale performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the property.

VI.
CAUSES OF ACTION

13. Each of the foregoing paragraphs is incorporated by reference in the following:

A. Breach of Contract

14. Scottsdale had a contract of insurance with Plaintiff. Scottsdale breached the terms of that contract by wrongfully denying and/or underpaying the claim and Plaintiff was damaged thereby.

B. Prompt Payment of Claims Statute

15. The failure of Scottsdale to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

16. Plaintiff, therefore, in addition to Plaintiff's claim for damages, is entitled to 18% interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

C. Bad Faith/Deceptive Trade Practices Act ("DTPA")

17. Defendant is required to comply with Chapter 541 of the Texas Insurance Code.

18. Defendant violated Section 541.051 of the Texas Insurance Code by:

(1) making statements misrepresenting the terms and/or benefits of the policy.

19. Defendant violated Section 541.060 by:

(1) misrepresenting to Plaintiff a material fact or policy provision relating to coverage at issue;

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- (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;
 - (3) failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
 - (4) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and
 - (5) refusing to pay the claim without conducting a reasonable investigation with respect to the claim;
20. Defendant violated Section 541.061 by:
- (1) making an untrue statement of material fact;
 - (2) failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;
 - (3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
 - (4) making a material misstatement of law; and
 - (5) failing to disclose a matter required by law to be disclosed.
21. At all material times hereto, Plaintiff was a consumer who purchased insurance products and services from Defendant.
22. Defendant has violated the Texas DTPA in the following respects:

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- (1) Defendant represented that the agreement confers or involves rights, remedies, or obligations which it does not have, or involve, or which are prohibited by law;
- (2) Scottsdale failed to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction that the consumer would not have entered into had the information been disclosed;
- (3) Scottsdale, by accepting insurance premiums but refusing without a reasonable basis to pay benefits due and owing, engaged in an unconscionable action or course of action as prohibited by Section 17.50(a)(1)(3) of the DTPA in that Scottsdale took advantage of Plaintiff's lack of knowledge, ability, experience, and capacity to a grossly unfair degree, that also resulted in a gross disparity between the consideration paid in the transaction and the value received, in violation of Chapter 541 of the Texas Insurance Code.

23. Defendant knowingly committed the acts complained of. As such, Plaintiff is entitled to exemplary and/or treble damages pursuant to the DTPA and Texas Insurance Code Section 541.152(a)-(b).

D. Attorneys' Fees

24. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendant and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

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25. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to Texas Civil Practice and Remedies Code Sections 38.001-38.003 because he is represented by an attorney, presented the claim to Defendant, and Defendant did not tender the just amount owed before the expiration of the 30th day after the claim was presented.

26. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 and 542.060 of the Texas Insurance Code.

VII.
CONDITIONS PRECEDENT

27. All conditions precedent to Plaintiff's right to recover have been fully performed, or have been waived by Defendant.

VIII.
DISCOVERY REQUESTS

28. Pursuant to Rule 194, you are requested to disclose, within fifty (50) days after service of this request, the information or material described in Rule 194.2(a)-(l).

29. You are also requested to respond to the attached interrogatories, requests for production, and requests for admissions within fifty (50) days, in accordance with the instructions stated therein.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, John Dodd prays that, upon final hearing of the case, he recover all damages from and against Defendant that may reasonably be established by a preponderance of the evidence, and that Mr. Dodd be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and

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further relief, general or special, at law or in equity, to which Mr. Dodd may show himself to be justly entitled.

Respectfully submitted,

DALY & BLACK, P.C.

By: /s/ Sheldon Wayne
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**ATTORNEYS FOR PLAINTIFF
JOHN DODD**

CAUSE NO. DC-16-11813

JOHN DODD § IN THE DISTRICT COURT
§
§
Plaintiff, §
§
VS. § DALLAS COUNTY, TEXAS
§
§
SCOTTSDALE INSURANCE COMPANY §
§
§
Defendant. § 162nd JUDICIAL DISTRICT

**DEFENDANT SCOTTSDALE INSURANCE COMPANY'S
ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SCOTTSDALE INSURANCE COMPANY, Defendant in the above styled and numbered cause, and file this, its Original Answer to the Plaintiff's Original Petition and in support thereof, would respectfully represent and show unto the Court the following:

**I.
GENERAL DENIAL**

1. Subject to and expressly without waiving any conditions, terms, or policy defenses, Defendant asserts a general denial to the material allegations contained in Plaintiff's Original Petition or latest amended Petition as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and demands Plaintiff be required to prove Plaintiff's charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and laws of the State of Texas, as well as substantive and procedural laws of the United States, or otherwise, as may be appropriate.

**II.
SPECIFIC DENIALS**

2. Defendant specifically denies that it engaged in violations of the Texas Insurance Code or the Texas Deceptive Trade Practices Act, and further denies that it is liable for damages under those statutes or that it is liable for exemplary damages.

**III.
AFFIRMATIVE DEFENSES**

3. Further answering, Defendant asserts with respect to Plaintiff's claim or any potential claim for punitive damages, any award of punitive damages must be limited to the greater of: (1) two times the amount of economic damages plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000; or (2) two times the amount of economic damages plus \$200,000, pursuant to the statutory mandates of Texas Civil Practice & Remedies Code §41.002-41.009, including the increased burden of proof.

4. Further answering, under Texas law an insured has a duty to read an insurance policy and is charged with knowledge of its contents. Defendant asserts that any claim which is based upon a misrepresentation, inducement, or reliance on a representation fails as a matter of law, since Plaintiff is charged with knowledge of the contents of all relevant policies at issue.

5. Further answering, Defendant asserts there is no ambiguity in the contract as there is only one reasonable interpretation. *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003).

6. Further answering, Defendant asserts Plaintiff's damages, if any, are limited by the amount set forth in the Policy limitations provisions of the applicable Policy.

7. Defendant would further plead there is no coverage under the policy to the extent that any material misrepresentation or omission was made by an insured in obtaining such policy.

8. Defendant asserts all terms, conditions, provisions, limitations, requirements, and exclusions of the policy. No reference to specific terms, conditions, provisions, limitations, requirements, and exclusions of the policy in this pleading shall be interpreted to limit the generality of the foregoing or of the general provisions referenced in subsequent paragraphs. To the extent the policy provides additional rights, remedies, or options available to Defendant that are not pleaded in this answer, Defendant does not waive its right to invoke such provisions either contractually or by further pleading.

9. Defendant further alleges Plaintiff's claim for pre-judgment interest is limited by the dates and amounts set forth in the following:

- Art. 5069-1.05 § 6, Tex. R. Civ. Stat;
- Chapter 304, Tex. Fin. Code; and
- Chapter 41, Tex. Civ. Prac. & Rem. Code

10. By way of further answer, Defendant made no material misrepresentation to Plaintiff and no false representation to Plaintiff. Accordingly, Plaintiff's cause of action for misrepresentation must necessarily fail. Further answering, Defendant is not liable in whole or in part to Plaintiff for any damages Plaintiff may have suffered, which Defendant denies, because Defendant's actions or inactions were not a producing or proximate cause of damages, injury or loss suffered by Plaintiff.

11. Defendant would assert that the Court should instruct the jury as to whether any recovery sought by the Plaintiff is subject to federal or state income taxes.

12. Further answering, Defendant denies Plaintiff's claim alleging bad faith against Defendant, as a *bona fide* controversy existed and continues to exist concerning the allegedly covered loss and Plaintiffs' entitlement to insurance benefits under the Policy. The duty of good faith and fair dealing is not breached by the existence of a *bona fide* controversy.

13. Defendant would further show the underlying claims are not covered under the policy to the extent such claims do not seek damages within the meaning of such policy.

14. Any coverage for the underlying claims to which Plaintiff's current Petition refers may be barred, in whole or in part, by the provisions, terms, exclusions, conditions and limitations applicable to the alleged policy.

15. Defendant *reserves* the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information regarding Plaintiff's claims and upon further investigation as to the provisions, terms and conditions of the policy.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final trial and hearing hereof, that no recovery be had from Defendant, but that Defendant goes hence without day and recover its costs, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

BY: /s/Randall G. Walters

RANDALL G. WALTERS – 20819480

randy.walters@wbclawfirm.com

Service of Documents:

WaltersEDocsNotifications@wbclawfirm.com

Meadow Park Tower, Suite 1500

10440 North Central Expressway

Dallas, Texas 75231

214/347-8381 – FAX

214/347-8380 – DIRECT

214/749-4805 – MAIN

CERTIFICATE OF SERVICE

This is to certify that on this 31st day of October, 2016, a copy of the above and foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/Randall G. Walters

RANDALL G. WALTERS